

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X
	:
Time Square Construction, Inc.,	:
	:
Plaintiff,	:
	: 07 CIV. 7250 ( SAS)
-against-	:
	:
MASON TENDERS DISTRICT COUNCIL	: <b><u>SUPPLEMENTAL AFFIDAVIT</u></b>
OF GREATER NEW YORK & LONG	: <b><u>OF JOEL E. COHEN</u></b>
ISLAND and Construction General Laborers	:
JATC, LOCAL UNION No. 79,	:
	:
Defendants.	:
	:
-----	X

JOEL E. COHEN, pursuant to 28 U.S.C. 1746, declares under penalty of perjury as follows:

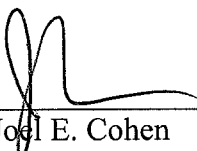
1. I am a member of McDermott Will & Emery LLP, counsel for plaintiff Time Square Construction, Inc. ("Time Square"). I am duly admitted to the bar of the Courts of the State of New York and to practice in the Southern District of New York. I submit this declaration in further support of Time Square's motion for an injunction to enjoin Defendants Mason Tenders District Counsel of Greater New York & Long Island ("MTDC") and Construction General Laborers JATC, Local Union No. 79 ("Local 79") (collectively "Unions" or "Defendants") from pursuing claims against Time Square in any arbitration under the multi-employer collective bargaining agreement between MTDC and the Building Contractors Association (the "BCA").

2. Attached as Exhibit A is a true and correct copy of portions of the transcript of the deposition of Defendants through 30(b)(6) witness Joseph Cangelosi taken on October 18, 2007.

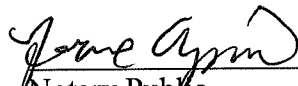
3. Attached as Exhibit B is a true and correct copy of portions of the transcript of the deposition of Kevin O'Sullivan taken on October 26, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
December 20, 2007

  
\_\_\_\_\_  
Joel E. Cohen

Sworn to before me this  
20th day of December 2007.

  
\_\_\_\_\_  
Notary Public

JOANNE ALNAJJAR  
Notary Public, State of New York  
No. 02AL6164964  
Qualified in New York County  
Commission Expires May 7, 2011

NYK 1138227-1.079158.0011

# **Exhibit A**

**COPY**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIME SQUARE CONSTRUCTION, INC.,

Plaintiff,

-against-

Civil Action No.  
07-CV-7250

MASON TENDERS DISTRICT COUNCIL OF  
GREATER NEW YORK & LONG ISLAND  
AND CONSTRUCTION GENERAL LABORERS  
JATC, LOCAL UNION NO. 79,

Defendants.

-----X

October 18, 2007  
3:04 P.M.

Deposition of Defendant

CONSTRUCTION GENERAL LABORERS JATC, LOCAL  
UNION NO. 79, by JOSEPH CANGELOSI, taken by  
Plaintiff, pursuant to Notice, at the offices  
of McDermott Will & Emery, LLP, 340 Madison  
Avenue, New York, New York 10173-1922, before  
Charisse Romeo, a Shorthand Reporter and  
Notary Public within and for the State of New  
York.

ARTA PASCULLO, President



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1 J. Cangelosi

2 that was using a union company as a Paymaster?

3 A. Brought a grievance against the  
4 nonunion company for using a Paymaster? I  
5 don't understand.

6 Q. No. What I'm asking, if I  
7 understood your answer before, whoever is the  
8 Paymaster, you consider to be responsible for  
9 that employee; is that right?

10 A. Right.

11 Q. Has the union ever brought a  
12 grievance against the nonunion company?

13 A. Well, it wouldn't go against the  
14 nonunion company, it would go against the  
15 company handling the payroll.

16 Q. Fine.

17 A. That doesn't mean the nonunion  
18 entity or the so-called contractor that isn't  
19 covered isn't responsible for the action  
20 causing the grievance.

21 Q. Okay. My question is: Have you  
22 ever actually filed a grievance or demand for  
23 arbitration against a nonunion company?

24 A. No. No.

25 Q. Okay. There are situations, I

1 J. Cangelosi

2 think you described earlier, where the  
3 nonunion company actually is the entity that  
4 wants to employ the laborer, the Local 79 man,  
5 but they don't have a contract, so they are  
6 put on someone else's payroll, correct?

7 A. Correct.

8 Q. What if -- what if the Paymaster  
9 actually doesn't have the right to control the  
10 work of that employee, what happens there?

11 A. Well, he doesn't have the right  
12 to control the actions, but that contractor  
13 who takes on the role of the Paymaster is  
14 responsible for the laborer's jurisdiction on  
15 that job. He is assuming responsibility.  
16 That is made clear, that they are assuming  
17 responsibility for our work on that job site  
18 as long as that job is going on.

19 Q. So let me just follow through and  
20 see if I understand.

21 What you are saying is that if,  
22 let's say, you have a nonunion company?

23 A. Okay.

24 Q. Okay, and you want to hire a  
25 Local 79 man but, obviously, doesn't have a

1 J. Cangelosi

2 Q. Why does it matter?

3 A. Because someone took on the  
4 responsibility for that job. They are locked  
5 in. Whoever takes the Paymaster position on  
6 that job, in their contract, it clearly states  
7 they are taking that position from the start  
8 of the job to the completion of the project.

9 Q. And why, if the Paymaster's  
10 purpose is simply to pay the money and bear  
11 the responsibility for whatever happens on the  
12 job, whether they are responsible or not, why  
13 does it make a difference to the union if the  
14 Paymaster is switched from one Local 79  
15 contractor to another?

16 A. It is just -- you know, first of  
17 all if -- that's the agreement. You are  
18 taking responsibility on for this job. You  
19 are getting it from start to end. You are  
20 vouching for this company.

21 We are not going to go back and  
22 forth 1400 times when, all of a sudden, I have  
23 a problem on the job and now, I am coming to  
24 you and you don't want to deal with it, so you  
25 are going to back out of it.

1 J. Cangelosi

2 You are taking responsibility  
3 from here on in. You are vouching for this  
4 guy. We don't know him. He obviously has  
5 some relationship with you, you know him, you  
6 are vouching, you are taking responsibility  
7 for the job.

8 Q. Why does it make a difference  
9 then in the beginning stages of who it is  
10 going to be, do you have contractors that you  
11 would rather be Paymaster?

12 A. No.

13 Q. It doesn't make a difference?

14 A. Doesn't make a difference.

15 Q. So it is for continuity purposes?

16 A. Yes, and also, because you have  
17 guys, once they start playing games, then the  
18 guy who is locked in, taking responsibility,  
19 he says, you know what? I'm not going to  
20 vouch for this guy anymore. And now, he walks  
21 away and we are back to square one.

22 How many times are we going to do  
23 that? Eventually, you'll be left with no  
24 bargaining agreement there.

25 Q. Nobody from Times Square who



1 J. Cangelosi

2 Q. So if you are not sure, I  
3 assume --

4 A. If you give me a couple of  
5 seconds to just jog my memory.

6 Q. Sure. Absolutely.

7 A. No, I don't remember.

8 Q. You don't remember. Did you have  
9 any conversations with any representatives of  
10 Times Square?

11 MR. PETERSON: You are talking  
12 about with respect to the separate  
13 check?

14 Q. In respect to Navillus no longer  
15 being the Paymaster, the new check.

16 A. No.

17 Q. No. Okay. Now, did there come a  
18 point in time when Local 79 started picketing  
19 the construction project?

20 A. Yes, we did.

21 Q. And who was your dispute with  
22 when you were picketing?

23 MR. PETERSON: Objection. That  
24 is not relevant.

25 MR. COHEN: I beg to differ.

1 J. Cangelosi

2 MR. PETERSON: Tell me why it is  
3 relevant.

4 MR. COHEN: I want to know who  
5 they considered to be the employer.

6 Q. Who was it that you were  
7 picketing when you were -- when the union  
8 picketed?

9 A. At that point, we were picketing  
10 Times Square Development.

11 Q. At any point, were you picketing  
12 Navillus?

13 A. No.

14 Q. And why were you picketing Times  
15 Square and not Navillus?

16 A. Because Times Square bought a  
17 gentleman there who had no representative  
18 doing our work, no representation on the job.

19 Q. Was he there before Nick Albanese  
20 started?

21 A. No, as far as I know, no.

22 Q. If he was there before Nick  
23 Albanese started, would that make a  
24 difference?

25 A. No, it wouldn't make a

1 J. Cangelosi

2 A. Right.

3 Q. That Navillus was going to be the  
4 Paymaster for that employee, that meant  
5 Navillus was also going to be the Paymaster  
6 for anybody doing work on the construction  
7 project, no matter who they were working for,  
8 and Navillus would be the Paymaster?

9 A. Yes.

10 Q. It doesn't make a difference if  
11 it was Times Square or if it was some other --  
12 if it was a general contractor or another  
13 subcontractor?

14 A. No, no, no. Navillus took on  
15 responsibility of covering the job of Local  
16 79's jurisdiction of work for Times Square  
17 Development.

18 Q. Right.

19 A. Any work on that job being  
20 performed, laborer's work, Navillus is now  
21 responsible for. So now, if this guy brought  
22 in another contractor doing fireproofing work,  
23 Navillus is responsible for that.

24 Q. Okay.

25 A. Navillus is upholding our end of

1 J. Cangelosi

2 the agreement.

3 Q. Okay. Where exactly -- what  
4 agreement do you have that actually sets that  
5 forth that that's the understanding?

6 A. Our collective bargaining  
7 agreement.

8 Q. Your collective bargaining  
9 agreement says whoever is the Paymaster is now  
10 assuming all responsibility of all work in  
11 Local 79's jurisdiction, no matter who the  
12 person is employed by --

13 A. Absolutely.

14 Q. -- on the project?

15 A. Absolutely.

16 Q. And that's how the union  
17 interprets the CB agreement?

18 A. Yes.

19 Q. And it doesn't matter whether  
20 Navillus has the ability to control what that  
21 person is doing?

22 A. Navillus took on responsibility.

23 Q. Once they agree to be a Paymaster  
24 for one person on a job?

25 A. You are taking responsibility for

1 J. Cangelosi

2 our collective bargaining agreement on that  
3 job site.

4 Q. Let me go to the example I was  
5 going to before, let me see if I understand.

6 Let's assume, and I think this  
7 was the example, forget about if it was a  
8 general contractor, once Navillus becomes a  
9 Paymaster for any Local 79 person on the  
10 job --

11 A. Uh-huh.

12 Q. -- whether it is the general  
13 contractor, the construction manager or any  
14 other subcontractor, anyone who -- any  
15 employee who is now doing Local 79 work on  
16 that job is now -- Navillus is now responsible  
17 for that?

18 A. Navillus took the role as the  
19 general contractor, yes.

20 Q. No. As the Paymaster.

21 A. As the Paymaster for the general  
22 contractor on the job.

23 Q. So even if the general contractor  
24 wasn't employing the person, even if another  
25 person was employing the person?

1 J. Cangelosi

2 Q. And again, I would assume, do you  
3 know of them ever in any, whether public  
4 sector or private sector, ever being a  
5 construction manager or general contractor,  
6 construction of a brand-new building?

7 A. Offhand, no.

8 Q. Now, going back to the question I  
9 asked you earlier: The union was picketing  
10 Times Square alone?

11 A. Yes.

12 Q. It was not picketing Navillus?

13 A. No.

14 Q. Again, what was the reason you  
15 were picketing Times Square?

16 When I say "you," I mean the  
17 union.

18 MR. PETERSON: Asked and  
19 answered.

20 THE WITNESS: What?

21 MR. PETERSON: Asked and  
22 answered.

23 MR. COHEN: I don't remember the  
24 answer.

25 (Record read.)

1 J. Cangelosi

2 Q. So that was the reason you were  
3 picketing Times Square?

4 A. Yes.

5 Q. And that didn't apply to  
6 Navillus, obviously, correct?

7 A. Correct.

8 MR. COHEN: And can I have this  
9 marked as Plaintiff's Exhibit 2.

10 (Colored photograph of a picket  
11 sign bearing production No. TIME  
12 SQUARE 01649 marked Plaintiff's  
13 Exhibit 2 for identification, as  
14 of this date.)

15 Q. I am asking you to look at what's  
16 been marked as Plaintiff's 2.

17 Was this the picket sign that was  
18 being used by the pickets who were picketing  
19 the Eighth Avenue job site?

20 A. I believe so.

21 Q. Can you explain to me why the  
22 sign says Local 79 was organizing construction  
23 laborers employed by Times Square?

24 A. Because the gentleman that was on  
25 the job had no representation by a collective

1 J. Cangelosi

2 bargaining agreement, so we were trying to  
3 organize Times Square Construction.

4 Q. If I am understanding you  
5 correctly, the picketing had actually nothing  
6 to do with Mr. Albanese?

7 A. No.

8 Q. Now, in terms of Mr. Albanese,  
9 the issue with Mr. Albanese, assuming Times  
10 Square and -- assuming the union, did not  
11 believe that Times Square and Navillus were  
12 the same company, if I understand you  
13 correctly, if something happened to Mr.  
14 Albanese on the job that the union was  
15 protesting, the union would go against  
16 Navillus because Navillus, as Paymaster, said  
17 they would be responsible?

18 MR. PETERSON: Objection as to  
19 form. I don't know what you mean.

20 Q. Do you understand the question?

21 MR. PETERSON: Excuse me.

22 Objection. I don't know what you mean  
23 by go against.

24 Q. Would bring an arbitration, say?

25 A. Against who?



1 J. Cangelosi

2 O'Sullivan and Kevin O'Sullivan  
3 marked Plaintiff's Exhibit 3 for  
4 identification, as of this date.)

5 MR. PETERSON: Let me just say,  
6 we initially indicated we would make  
7 the head of the grievance department  
8 available as our witness and there was  
9 some concern made by your office that  
10 that person would not be aware of --

11 MR. COHEN: What I served was a  
12 notice of deposition for a witness or  
13 witnesses who would be able to answer  
14 the questions, okay?

15 It doesn't have to be one witness  
16 and it is made clear in the notice of  
17 deposition.

18 So if you are telling me this  
19 gentleman is not in a position to  
20 answer these questions, then we're  
21 going to have -- you have to provide a  
22 person who will, but let me see if he  
23 does have knowledge.

24 MR. PETERSON: That's fine.

25 Q. Why is it -- if I understand you

1 J. Cangelosi

2 correctly, the reason why the union would have  
3 filed a demand for arbitration against Times  
4 Square is not because of the Paymaster System,  
5 it is because you believe they are the same  
6 company?

7 A. No.

8 Q. No?

9 A. This was brought against  
10 Navillus, I believe, to get the guy's checks  
11 because they were trying to pay him under  
12 something else.

13 Q. So this has nothing to do with  
14 Times Square?

15 A. No.

16 Q. And what you are looking at is  
17 Plaintiff's Exhibit 3, correct?

18 A. This is getting Nick his back  
19 money.

20 Q. And your understanding -- right,  
21 and your understanding is that this is being  
22 brought against Navillus because they were the  
23 Paymaster?

24 A. Right.

25 Q. And it has nothing to do with

1 J. Cangelosi

2 Times Square?

3 A. No.

4 Q. Were you involved in making the  
5 decision to file the demand for arbitration?

6 A. Yes, I filed the grievance.

7 Q. You are the one who wrote the  
8 grievance?

9 A. Well, the grievance department  
10 handles that.

11 Q. There is a clause in your  
12 collective bargaining agreement -- you are  
13 familiar with your collective bargaining  
14 agreement?

15 A. Yes.

16 Q. I have your collective bargaining  
17 agreement here.

18 MR. COHEN: Mark this as  
19 Plaintiff's Exhibit 4.

20 MR. PETERSON: Well, this is the  
21 independent agreement.

22 MS. PITTAWAY: It should have  
23 been attached to the contract. Did I  
24 make a mistake?

25 MR. COHEN: Which agreement

# **Exhibit B**

# ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

TIMES SQUARE CONSTRUCTION, INC.,

Plaintiff,

-against-

07-CV-7250

MASON TENDERS DISTRICT COUNCIL OF  
GREATER NEW YORK & LONG ISLAND and  
CONSTRUCTION GENERAL LABORERS JATC,  
LOCAL UNION NO. 79,

Defendants.

-----X

October 26, 2007

10:16 a.m.

Deposition of KEVIN O'SULLIVAN, held  
at the offices of Meyer, Suozzi, English &  
Klein, P.C., 1350 Avenue of the Americas,  
New York, New York, pursuant to Notice,  
before John Ianno, Jr., a Notary Public of  
the State of New York.

1 **K. O'Sullivan**

2 Q. Do you remember him contacting you  
3 about the Chatman School?

4 A. I don't.

5 Q. What about your brother, Donal's  
6 involvement in Times Square, what work has he  
7 done, when I say work, I'm speaking very broadly  
8 again, phone calls, signing documents, attending  
9 meetings, whatever, what kinds of things has he  
10 done for Times Square?

11 A. On a day-to-day basis, nothing.  
12 Locating new projects or new development sites,  
13 you know.

14 Q. Could you expand a little when you say  
15 he looks at new projects and development sites?

16 A. I'm the one who would be sourcing the  
17 new project if I came, like a particular project,  
18 as to Donal, I would ask him what would his  
19 thoughts be, or would he invest as a developer.

20 Q. So you would be doing the legwork, but  
21 if something appealed to you, you and he would  
22 make a decision together about whether to get into  
23 that project; right?

24 A. I would ask his opinion, what he would  
25 think, but he would refer it back to me, being